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Tuesday,
4th November 1913.

Abstract Proceedings of the Travancore Legislative Council.

The Council met in the Dewan's room, Public offices, at 12 Noon, on Friday, the 10th October 1913/24th Kanni 1089.

PRESENT.

Dewan Bahadur P. Rajagopalachari, Esquire, C. I. E., Dewan.....*Presiding.*

A. J. Vieyra, Esq., B. A.
M. Krishnan Nair, Esq., B. A. & B. L.
E. Poonen, Esq., B. A., M. D., C. M., F. R. I. P. H.
V. Subba Iyer, Esq., B. A. & B. L.
K. Aiyappan Pillai, Esq., B. A.
N. Subrahmanya Iyer, Esq., M. A.
P. Kuruvila Varkki, Esq.
R. Mahadeva Iyer, Esq., B. A.
R. Easwara Pillai, Esq., B. A.
K. Parameswaran Pillai, Esq., B. A. & B. L.
K. G. Sesha Iyer, Esq., B. A. & B. L.
C. P. Thomas, Esq., B. A. & L. T.

K. Narayanan Pandalay, Esq., B. A. & B. L. .... *Secretary.*

THE VILLAGE PANCHAYAT COURTS BILL.

Mr. Subba Iyer proposed that this Bill which had been adjourned to that meeting be taken up for consideration. The motion was put and agreed to.

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Section 3.

Mr. Sesha Iyer stated that the words "remaining unexecuted" which were in the original Bill were more appropriate than the words "pending execution," in lines 8 and 9 of the Section, and he proposed that the former words be substituted for the latter.

Seconded by Mr. Krishnan Nair.

Carried.

Section 4.

Mr. Sesha Iyer stated that the expression "District Munsiff" which occurred in Sections 18, 26, 67 and 76 was not defined in the Bill, and he proposed that the following definition given in the original Bill be added at the end of the Section :—

"'District Munsiff' means the District Munsiff within the local limits of whose "jurisdiction the Village Panchayat Court is situate."

Mr. Subba Iyer said that the definition was unnecessary, in as much as a District Munsiff did not, under the proposed law, exercise any control over the Village Panchayat Court and that the definition was purposely omitted by the Select Committee.

After some discussion, the Council resolved that the definition was unnecessary and that it would suffice if, in Sections 18, 26, 67 and 76, the wording "the District Munsiff" was so modified as to make it clear which Court was meant.

Section 6.

Mr. Sesha Iyer proposed that the word "in" be inserted between the words "instituted" and "and" in line 6 of the Section.

Seconded by Mr. Vieyra.

Carried.

Section 10.

Mr. Krishnan Nair said that the terms "real" and "personal" were peculiar to the terminology of English law, and he proposed that the word "movable" be substituted for the word "personal" in line 6 of sub-section (1).

Seconded by Mr. Subba Iyer.

Mr. Sesha Iyer said that the qualifying words "whether on balance of account or otherwise" in lines 9 and 10 of sub-section (1), applied to all the claims in respect of which a suit might be brought in a Village Panchayat Court, and he proposed that the words be omitted, as the qualification was meaningless in reference to a claim for movable property.

Mr. Subba Iyer stated that the words might be retained, as Clause (1) of the Proviso to sub-section (1) excluded suits on a balance of partnership account, where such balance was not struck by the parties or by their agents.

Mr. Krishnan Nair said that he agreed with Mr. Sesha Iyer in suggesting the omission of the words "whether on balance of account or otherwise."

Mr. Sesha Iyer said that it was not clear whether a suit relating to a trust would not, under the terms of the Section, fall within the cognizance of a Village Panchayat Court, and Mr. Krishnan Nair observed that he had similar doubts in reference to suits for maintenance.

The President expressed the doubt whether it would be advisable to give the Village Panchayat Courts jurisdiction over such suits as were excluded from the Small Cause jurisdiction of the Munsiffs under the Civil Courts Regulation, II of 1084.

After full discussion, the Council finally resolved that the restrictions in regard to suits, which applied to the Small Cause jurisdiction of the Munsiffs, should be made applicable to the suits triable by the Village Panchayat Courts.

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Mr. Krishnan Nair accordingly moved that sub-section (1) be recast as follows :—

"(1) The Village Panchayat Courts shall try all suits of a Civil nature, except "suits specified in Schedule I hereto annexed, the amount or value of which does not "exceed rupees thirty."

He further moved that the following Schedule be added at the end of the Bill:—

SCHEDULE I.

"Suits which shall not be triable by a Village Panchayat Court:—

"(1) A suit concerning an act or order purporting to be done or made by Our "Dewan in his official capacity, or concerning an act purporting to be done by any "person by order of Our Dewan in his official capacity;

"(2) a suit concerning an act purporting to be done by any person in pursu- "ance of a judgment or order of a Court or of a Judicial officer acting in the execution of "his office;

"(3) a suit concerning an act or order purporting to be done or made by any "other officer of the Government in his official capacity;

"(4) a suit for the possession of immovable property or for the recovery of an "interest in such property;

"(5) a suit for the partition of immovable property;

"(6) a suit by a mortgagee of immovable property for the foreclosure of the "mortgage or for the sale of the property, or by a mortgagor of immovable property for "the redemption of the mortgage;

"(7) a suit for the assessment, enhancement, abatement or apportionment of "the rent of immovable property;

"(8) a suit concerning the liability of land to be assessed to land-revenue;

"(9) a suit to restrain waste;

"(10) a suit for the determination or enforcement of any other right to or "interest in immovable property;

"(11) a suit for the possession of an hereditary office or of an interest in such "an office, including a suit to establish an exclusive periodically recurring right to dis- "charge the functions of an office;

"(12) a suit to enforce payment of any allowance paid to families or individuals "by the State, or of cesses or other dues when the cesses or dues are payable to a "person by reason of his interest in immovable property or in an hereditary office or in "a shrine or other religious institution, other than cesses or dues recoverable under the "Jenmi and Kudiyan Regulation;

"(13) a suit to recover from a person, to whom compensation has been paid "under the Land Acquisition Regulation, the whole or any part of the compensation;

"(14) a suit for the specific performance or rescission of a contract;

"(15) a suit for the rectification or cancellation of an instrument;

"(16) a suit to obtain an injunction;

"(17) a suit relating to a trust, including a suit to make good out of the general "estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by a "co-trustee to enforce against the estate of a deceased trustee a claim for contribution;

"(18) a suit for a declaratory decree, not being a suit relating to movable "property instituted under Section 280 or Section 321 of the Code of Civil Procedure;

"(19) a suit to set aside an attachment by a Court, otherwise than in execution "of a decree for money and in relation to movable property, or Revenue authority, "or a sale, mortgage, lease or other transfer by a Court or a Revenue authority or by a "guardian;

"(20) a suit for property which the plaintiff has conveyed while insane;

"(21) a suit to alter or set aside a decision, decree or order of a Court or of a "person acting in a judicial capacity;

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"(22) a suit to contest an award ;

"(23) a suit upon a foreign judgment as defined in the Code of Civil Procedure;

"(24) a suit to compel a refund of assets improperly distributed under Section "292 of the Code of Civil Procedure;

"(25) a suit to compel a refund by a person to whom an executor or administrator "has paid a legacy or distributed assets;

"(26) a suit for a legacy or for the whole or a share of a residue bequeathed by "a testator, or for the whole or a share of the property of an intestate ;

"(27) a suit—

"(*a*) for a dissolution of partnership or for the winding up of the business of "a partnership after its dissolution ;

"(*b*) for an account of partnership transactions ; or

"(*c*) for a balance of partnership-account, unless the balance has been struck "by the parties or their agents ;

"(28) a suit for an account of property and for its due administration under "decree ;

"(29) any other suit for an account, including a suit by a mortgagor, after "the mortgage has been satisfied, to recover surplus collections received by the "mortgagee, and a suit for the profits of immovable property belonging to the plaintiff "which have been wrongfully received by the defendant ;

"(30) a suit for a general average loss or for salvage ;

"(31) a suit for compensation in respect of collision between ships ;

"(32) a suit on a policy of insurance or for the recovery of any premium paid "under any such policy ;

"(33) a suit for compensation—

"(*a*) for loss occasioned by the death of a person caused by actionable wrong;

"(*b*) for wrongful arrest, restraint or confinement ;

"(*c*) for malicious prosecution ;

"(*d*) for libel ;

"(*e*) for slander ;

"(*f*) for adultery or seduction ;

"(*g*) for breach of contract of betrothal or promise of marriage ;

"(*h*) for inducing a person to break a contract made with the plaintiff ;

"(*i*) for obstruction of an easement or diversion of a water course ;

"(*j*) for illegal, improper or excessive distress or attachment ;

"(*k*) for improper arrest under Chapter XXXIII of the Code of Civil Proce- "dure or in respect of the issue of an injunction wrongfully obtained under Chapter "XXXIV of that Code ; or

"(*l*) for injury to the person in any case not specified in the foregoing sub- "clauses of this Clause ;

"(34) a suit by a Mahomedan for exigible (*mu'ajjal*) or deferred (*mu' wajjal*) "dower ;

"(35) a suit for the restitution of conjugal rights, for the recovery of a wife, "for the custody of a minor or for a divorce ;

"(36) a suit relating to maintenance except when the claim is based on an "express contract in writing duly registered ;

"(37) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer, or by a manager of joint "property, or a member of an undivided family, in respect of a payment made by him "on account of the property or family ;

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"(38) a suit by one of several joint mortgagors of immovable property for "contribution in respect of money paid by him for the redemption of the mortgaged "property:

"(39) a suit against the Government to recover money paid under protest in "satisfaction of a claim made by a Revenue authority on account of an arrear of land "revenue or of a demand recoverable as an arrear of land revenue.

Seconded by Mr. Subrahmanya Iyer.

Carried.

Section 12.

Mr. Sesha Iyer said that the provision in the Section that, where there were more defendants than one, the suit should be instituted in the Village Panchayat Court within whose jurisdiction the majority of the defendants resided, had the effect of curtailing the range of choice of the plaintiff in regard to the Court wherein to institute his suit, and Mr. Sesha Iyer, therefore, proposed that the words "where there are more defendants than one, any of the defendants, at the time of the commencement of the suit, resides or carries on business or personally works for gain" be substituted for the words "is, or if there are more defendants than one, the majority of them are, and, if there is no majority, any of the defendants is, at the time of the commencement of the suit, residing or carrying on business or personally working for gain", in lines 9 to 15 of the Section.

Mr. Subba Iyer stated that, in his opinion, the amendment suggested was unnecessary, as the Section, as it stood, served better the convenience of the public.

The Council resolved that the amendment was not necessary.

Section 14.

Mr. Sesha Iyer said that the expressions "cause of action", "heard" and "determined", in lines 3 & 4 of the Section were highly technical, that volumes had been written by eminent jurists in regard to their exact meaning and that, in view to the fact that the judges of the Village Panchayat Courts would, in many cases, consist of persons not possessing a high standard of legal training, it was necessary, in his opinion, to use language more clear and definite in import. He accordingly proposed that the words "in a former suit" in lines 5 and 6 be omitted, and that the words "for a relief for which a suit has already been brought and decided" be substituted for the words "on a cause of action, which has been brought and determined", in lines 3 and 4 of the Section.

Mr. Subba Iyer stated that, if Mr. Sesha Iyer's amendment was accepted, the fact that a relief sought for and refused by the Court on the ground that the suit was premature or that the cause of action had not arisen, would bar a fresh trial, contrary to the intention of the proposed law.

The President stated that he was aware of the existence of a large volume of literature in regard to the meaning of the terms objected to by Mr. Sesha Iyer, and that, for all practical purposes, the terms were understood by laymen well enough. He was, therefore, of opinion that the amendment was unnecessary.

Resolved accordingly.

Section 17.

Mr. Sesha Iyer observed that, while the British Limitation Act allowed only three years' time for a suit on a promissory note, the period of limitation in Travancore was six years, and that the restriction which debarred a Village Panchayat Court from entertaining a suit after the expiration of three years from the time when the right to sue accrued, if adopted, would throw upon the ordinary Civil Courts the work of deciding the petty suits which the Village Panchayat Courts would otherwise be competant to decide. Mr. Sesha Iyer therefore proposed that paras 2 and 3 of the Section be omitted.

Seconded by Mr. Krishnan Nair.

Carried.

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Section 18.

Mr. Sesha Iyer suggested that the power of transferring cases from a Village Panchayat Court be vested in the District Court instead of in the High Court as provided in the Bill, and he moved that para 1 of the Section be recast as follows :—

"The District Court within the limits of whose jurisdiction a Village Panchayat "Court is situate, may withdraw any suit from such Village Panchayat Court and "transfer it, for trial, to the Court of any District Munsiff subordinate to such District "Court or to any other Village Panchayat Court situate within the limits of the juris-"diction of such District Court."

Mr Subba Iyer invited the attention of the Council to the report of the Committee that was appointed to frame the Bill, and stated that the framers of the Bill departing from the provision of the British Act which conferred the power of transferring cases on the District Munsiffs, reserved the power to the High Court, chiefly in view to the status of the proposed Courts and to the fact that, under the provisions of the Code of Civil Procedure, the High Court was the sole authority competent to transfer cases.

Mr. Sesha Iyer said that his point was that, in as much as the District Magistrates were, under the Criminal Procedure Code, invested with the power of transferring cases from the file of one Magistrate to that of another, the District Judges could be so empowered in regard to cases instituted in the Village Panchayat Courts.

The President said that, all things considered, it was better to accept Mr. Sesha Iyer's proposal and confer the power on the District Courts. Such a course, the President observed, would, besides avoiding congestion of work in the High Court, add to the convenience of the public.

The Council accordingly resolved that the Section be recast as proposed by Mr. Sesha Iyer.

Mr. Sesha Iyer then proposed that the proviso to the Section be recast as follows:—

"Provided that no application by a party for the transfer of a suit from a Village "Panchayat Court to the Court of a District Munsiff shall be entertained unless the "fee payable under the Court Fees Regulation then in force in respect of such application "has been paid".

He, however, enquired whether, consistently with the express object of the Bill, viz., to minimise the cost of litigation in petty suits, applications of the kind in question could not be wholly exempted from the liability to pay court fee.

Mr. Krishnan Nair said that he was not in favour of such exemption, especially because the fee charged on such an application was after all very small, viz, eight annas.

The President agreed with Mr. Krishnan Nair, but suggested that the proviso might be omitted, leaving the general law to act.

The Council accordingly resolved that the proviso be omitted.

Section 20.

Mr. Krishnan Nair proposed that the word "plaint" be substituted for the word "summons" in line 7 of the Section.

Seconded by Mr. Vieyra.

Carried.

Section 21.

Mr. Sesha Iyer proposed that the words "to each defendant" be inserted between the words "delivered" and "or" in line 7 of the Section.

Seconded by Mr. Mahadeva Iyer.

Carried.

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Section 22.

Mr. Sesha Iyer said that plaints under the Civil Procedure Code had to be verified by the plaintiffs, and he proposed that the words "and verified" be added after the word "signed" in line 4.

Seconded by Mr. Krishnan Nair.

Carried.

Mr. Sesha Iyer proposed that the words "from Travancore" be added after the word "absence" in line 5 of the Section.

Mr. Subba Iyer said that the proposed words did not find a place in the corresponding Section of the Civil Procedure Code.

Mr. Krishnan Nair said that what was meant was absence from the village in which the Court was situated and not absence from the State.

After some discussion, the Council resolved that the amendment was unnecessary.

Section 23.

The President observed that the term 'relative' was very indefinite, and he suggested that the words "or by a relative specially authorised in writing" in lines 7 and 8 of the Section, be omitted.

The Council adopted the above suggestion.

Mr. Sesha Iyer proposed that the first para of the Section, with the amendment already carried, be recast as follows:—

"Any appearance, application or act required or authorised by law to be made or "done by a party to a suit in any Village Panchayat Court, may be made or done in such "Court, by the party in person, or by his recognized agent or by a pleader duly appoin-"ted to act in this behalf".

Seconded by Mr. Vieyra.

Carried.

Mr. Sesha Iyer observed that the definition of a recognised agent, given in the Explanation, would exclude a person specially authorised in that behalf, and he proposed that the words "a power" be substituted for the words "general powers" in line 17 of the Section.

Seconded by Mr. Subba Iyer.

Carried.

Mr. Sesha Iyer proposed that the words "and do" be added after the word "make" in line 18 of the Section.

Seconded by Mr. Vieyra.

Carried.

Section 26.

Mr. Krishnan Nair proposed that the words "within whose jurisdiction the defendant resides" be added after the word "Munsiff" in line 7 of the Section.

Seconded by Mr. Vieyra.

Carried.

Section 27.

Mr. Vieyra proposed that, in conformity with the amendment already carried, the words "or by a relative" in lines 2 and 3 of the Section be omitted.

Seconded by Mr. Subba Iyer.

Carried.

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Mr. Krishnan Nair observed that the two days' notice to the defendant provided for in the Section was inadequate, and he suggested that the word "seven" be substituted for "two" in line 12 of the Section, as also in the marginal note.

Seconded by Mr. Subba Iyer.

Carried.

Sections 28, 29 and 30.

Mr. Sesha Iyer proposed that the above three Sections be recast as follow :—

28. "Where, on the day fixed for the defendant to appear, (1) it is found that "the summons has not been served owing to the plaintiff's default and the defendant "does not appear, or (2) neither party appears, the Court may make an order that the "suit be dismissed."

29. "Where the plaintiff does not appear, but the defendant appears when the "suit is called on for hearing, the Court shall make an order that the suit be dismissed, "unless the defendant admits the claim, or part thereof, in which case, the Court shall "pass a decree against the defendant upon such admission, and, where part only of the "claim has been admitted, shall dismiss the suit so far as it relates to the remainder."

30. (1). "Where a suit is dismissed under Section 28, the plaintiff may (subject "to the law of limitation) bring a fresh suit ; or he may apply for an order to set it "aside, and if he satisfies the Court that there was sufficient cause for his default or non-"appearance, as the case may be, the Court shall make an order setting aside the "dismissal and shall appoint a day for proceeding with the suit."

(2) "Where a suit is wholly or partly dismissed under Section 29, the plaintiff "shall be precluded from bringing a fresh suit ; but he may apply for an order to set "the dismissal aside. If he satisfies the Court that there was sufficient cause for his non-"appearance when the suit was called on for hearing, the Court shall make an order "setting aside the dismissal, and shall appoint a day for proceeding with the suit."

Mr. Subba Iyer observed that the main feature of the amendments proposed was that, even in a case where the suit was dismissed on the ground of the plaintiff's default or non-appearance, the plaintiff might obtain an order restoring the suit, on his showing sufficient cause for such non-appearance or default.

Mr. Sesha Iyer said that the provision was taken from the British Civil Procedure Code and that it was necessary to insert the same in the Bill in order to safeguard the interests of a plaintiff whose remedy by a fresh suit might be barred by limitation.

After some discussion, the Council resolved that Mr. Sesha Iyer's amendments be adopted in their entirety.

Section 31.

Mr. Sesha Iyer proposed that the words "by a Village Panchayat Court" be added after the words "defendant" in line 3 of the Section and that the word "such" be substitued for the words "the Village Panchayat" in lines 4 and 5.

Seconded by Mr. Vieyra.

Carried.

Section 34.

Mr. Sesha Iyer observed that it was not clear from the wording of the Section whether one of several plaintiffs might apply for withdrawal of the suit, without the consent of the others, or whether it was open to a plaintiff or plaintiffs, as the case may be, to abandon a part of the claim set forth in the plaint, when, for instance, an error was discovered subsequent to the presentation of the plaint. He accordingly moved that the Section be recast, as follows :—

"(1) At any time after the institution of a suit, the plaintiff, or where there are "more plaintiffs than one, any one of them, with the consent of the others, may, as against "all or any of the defendants, withdraw the suit or abandon part of the claim.

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"(2) Where the Court is satisfied that there are sufficient grounds for allowing "the plaintiff or plaintiffs, as the case may be, to institute a fresh suit for the subject-"matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant permis-"sion to withdraw from such suit or abandon such part of a claim with liberty to insti-"tute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

"(3) In any fresh suit instituted on permission granted under the last preceding "sub-section, the plaintiff shall be bound by the law of limitation in the same manner as "if the first suit had not been instituted."

Mr. Subba Iyer said that, in his opinion, the amendment was unnecessary and that a fresh suit was not desirable.

Mr. Sesha Iyer stated that the absence of a provision for the abandonment of part of a claim would be productive of inconvenience.

Mr. Subrahmanya Iyer said that all such elaborate provisions could well be omitted from the Bill, if the Council would accept the suggestion made by Mr. Parameswaren Pillai in his minute of dissent from the Select Committee's report, that the provisions of the Code of Civil Procedure might, as far as might be, be rendered applicable to the proceedings of the new Courts.

The President said that, having regard to the class of men that would constitute the Bench in the proposed Courts, it was necessary that the Bill should be self-contained and comprehensive in its provisions, without containing references to other laws.

After considerable discussion, the President observed that simplicity should be the aim of the Council in a legislation of that kind. It might not be always possible to obtain men for appointment as Judges of the new Courts, who possessed the same standard of efficiency as our present-day Judicial officers. The question for consideration was what exactly was the load of procedure which might be thrown upon them without their breaking under it. He suggested that a provision regarding the withdrawal of suits and abandonment of portions of claims by one of several plaintiffs, might be made and that it was unnecessary to invest the new Courts with authority to grant permission for such withdrawal or abandonment.

Mr. Krishnan Nair accordingly proposed that the Section be recast thus :—

"At any time after the institution of a suit, the plaintiff, or where there are more "plaintiffs than one, any one of them, with the consent of the others, may, as against all "or any of the defendants, withdraw the suit or abandon part of the claim, and no fresh "suit shall be brought in respect of the subject-matter of such suit or such part of the "claim so withdrawn or abandoned."

Seconded by Mr. Vieyra.

Carried.

Mr. Sesha Iyer proposed that the following provision regarding compromise of suits made in Rule 3, Order XXIII of the First Schedule to the British Code of Civil Procedure, Act V of 1908, be added as Section 35 of the Bill :—

"Compromise of suit."

"Where it is proved to the satisfaction of the Court that a suit has been adjusted "wholly or in part by any lawful agreement or compromise, or "where the defendant satisfies the plaintiff in respect of the whole or "any part of the subject-matter of the suit, the Court shall order such agreement, "compromise or satisfaction to be recorded, and shall pass a decree in accordance there-"with so far as it relates to the suit."

Mr. Subba Iyer said that provision for adjustment of suits by compromise had already been made in Section 33 of the Bill and that a new Section was therefore unnecessary.

Mr. Krishnan Nair said that the provision suggested by Mr. Sesha Iyer need not be put in as a separate Section and that, in his opinion, it would suffice if suitable changes were made in Section 33. He accordingly proposed that the words "whether then or at any subsequent stage, in whole or in part," be added after the word "compromised"

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in line 6 of that Section, and that the words "the defendant" be substituted for the word "he" in line 10.

Seconded by Mr. Parameswaren Pillai.

Carried.

Section 38.

Mr. Sesha Iyer proposed that "such" be substituted for "the Courts" in line 5 of the Section and "its" be substituted for "the" in line 8.

Seconded by Mr. Subba Iyer.

Carried.

Mr. Vieyra proposed that the words "with a letter" in lines 12 and 13 be omitted

Seconded by Mr. Subba Iyer.

Carried.

Section 40.

Mr. Sesha Iyer proposed that "or" be substituted for "and" between "evidence" and "produce" in line 7 of the Section; also that "such" be substituted for "the" before "document" in line 8 and that "summoned" in line 9 be omitted.

Seconded by Mr. Vieyra.

Carried.

Mr. Sesha Iyer proposed that sub-section (2) to the Section be omitted, as the identical provision was contained in Section 44 of the Bill.

Seconded by Mr. Subba Iyer.

Carried.

Section 41.

Mr. Krishnan Nair observed that Courts were not, in any way, prevented from summoning a person who claimed exemption from personal attendance. He accordingly proposed that the words "compelled to attend" be substituted for the word "summoned" in line 10 of the Section.

Seconded by Mr. Vieyra.

Carried.

Section 45.

Mr. Sesha Iyer proposed that the words "and according to good conscience" in lines 7 and 8 of the Section be omitted and that "or" be inserted between the words "just" and "equitable" in line 7.

Mr. Subba Iyer said that the phraseology was adopted from the Travancore Civil Courts Regulation, II of 1084.

Mr. Krishnan Nair said that the words "just," "equitable" and "according to good conscience", all practically had the same meaning and that it would suffice to retain one of those expressions, viz, "just."

Resolved accordingly.

Section 46.

Mr. Sesha Iyer moved the following verbal amendments :—

(1) Substitute "in the suit" for "thereon" in line 8.

(2) Add the word "or" after "adjudged" in line 10, as also after "delivered" in line 11.

(3) Substitute "bear date" for "be dated on" in line 15 and insert "be" between "and" and "signed" in line 16.

Seconded by Mr. Vieyra.

Carried.

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Section 47.

Mr. Krishnan Nair said that it would be well to fix the rate of interest which the Court might award on the decree amount.

Mr. Subba Iyer said that the suggested provision was unnecessary, as there was a High Court Circular in force fixing the rate at six per cent per annum.

Mr. Krishnan Nair said that, all the same, he was for making an express provision in the Bill, so that the Panchayat Courts might not be in doubt as to the applicability of the Circular referred to. He suggested that, in view to the fact that money was scarce in the villages, the maximum rate of interest be fixed at nine per cent, and proposed that the words "not exceeding nine per cent per annum" be added after the word "rate" in line 12 of the Section.

Seconded by Mr. Mahadeva Iyer.

Carried.

Section 48.

Mr. Vieyra proposed that the words "or their pleaders" in line 9 of the Section be omitted.

Seconded by Mr. Aiyappen Pillai.

Carried.

Section 51.

Mr. Sesha Iyer said that, under the Section as it stood, it was not obligatory on the decree-holder to certify a payment or adjustment of a decree made out of Court. The Section required the Courts to recognise only such payments and adjustments as were made and recorded in the manner prescribed in it. The judgment-debtor had to depend entirely on the good sense and honesty of the decree-holder for certifying the transaction in Court. If the decree-holder turned out dishonest, the judgment-debtor had no remedy but to bring a fresh suit for recovering the payment made by him. Mr. Sesha Iyer said that the legislature should not favour the one party or the other. He proposed that the Section be recast as follows in conformity with the corresponding provisions of the Code of Civil Procedure :—

"All money payable under a decree passed by a Village Panchayat Court shall be "paid in open Court to the decree-holder or his agent specially authorised in writing, but "if the decree is otherwise adjusted to the satisfaction of the decree-holder, the decree-"holder shall certify such adjustment to the Court and the Court shall record such pay-"ment or adjustment in the register of suits.

"The judgment-debtor may also inform the Court of such adjustment, and the "Court shall thereupon issue a notice to the decree-holder to show cause why such adjust-"ment should not be recorded as certified ; and if, after due service of such notice, the "decree-holder fails to appear on the day fixed, or, having appeared, fails to show cause "why the adjustment should not be recorded as certified, the Court shall record the same "accordingly.

"A payment or adjustment which has not been made, certified or recorded as "aforesaid, shall not be recognised by any Court executing the decree."

The President observed that people ordinarily went to Court only when the parties concerned were greatly disagreed, and that, in those circumstances, common prudence should dictate rather a payment into Court than a payment or adjustment outside it. If the judgment-debtor preferred the latter course, he had better take the risk. So far as the Village Panchayat Courts were concerned, it was not necessary, in his opinion, to add a fresh issue in regard to the fact of such payment or adjustment, and to allow the parties to fight out the battle over again.

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Mr. Parameswaran Pillai said that payments out of Court always caused delay in the execution of decrees.

After considerable discussion, Mr. Subba Iyer moved that the Section be recast as follows :—

"51 (1) All money payable under a decree passed by a Village Panchayat Court shall be paid into Court.

"(2) If the decree is otherwise adjusted to the satisfaction of the decree-holder, "the nature of such adjustment shall be recorded in writing, and signed by him or his agent authorised in writing in open Court, and such record shall bear the initials of the "President, or, in his absence, of the Senior Judge.

"(3) All payments or adjustments shall be endorsed by the President, or, in his "absence, the Senior Judge, on the decree and also recorded in the register of suits.

"(4) No payment under a decree, and no adjustment of a decree in whole or in "part, shall be recognised unless it has been made or recorded in the manner prescribed "by this Section.

"(5) Notwithstanding anything contained in this Section, the execution of a "decree of a Village Panchayat Court, transferred to a District Munsiff for execution, "shall be governed by the provisions of the Civil Procedure Code for the time being "in force."

Seconded by Mr. Vieyra.

Carried.

The Council adjourned at 5-15. P. M. and met again the next day at 12-15 P. M. All the Members who attended the previous day were present. The Council resumed the consideration of the remaining Sections of the Bill.

Section 52.

Mr. Sesha Iyer said that imprisonment was a discredited method of enforcing payment of money due under a decree and that Panchayat Courts, if trusted with the power to order arrest and imprisonment of a defaulting decree-debtor, were apt to misuse it. He was, therefore, of opinion that the Government need not reserve the power to authorise any of the new Courts in that behalf, and he proposed that the Proviso to the Section be omitted.

Seconded by Mr. Krishnan Nair.

Carried.

Section 53.

Mr. Sesha Iyer proposed that the word "amount" be substituted for "sum" in line 9 of the Section.

Seconded by Mr. Krishnan Nair.

Carried.

Mr. Sesha Iyer proposed that the words "and such personal ornaments as, in accordance with religious usage, cannot be parted with by a woman," which occur in Section 60 of the British Civil Procedure Code, Act V of 1908, be added after the word "children" in line 3 of Clause (a) of the Proviso to the Section.

The President observed that all the exemptions specified in the Section were stock exemptions adopted from the language of the Civil Procedure Code, and he said that, though personally he had no objection to safeguard a woman's jewels by exempting them from liability to attachment in execution of a decree, the addition of civilised precautions of the kind was apt to render the machinery of the new Courts more or less inoperative.

Mr. Thomas, in seconding the motion, said that the exemption suggested by Mr. Sesha Iyer was necessary, as, in popular opinion, some sanctity attached to the "tali" among Hindus and the "wedding ring" among Christians.

Carried.

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Mr. Sesha Iyer said that, having regard to the fact that the major portion of the population in the State consisted of agriculturists, it was necessary to add a provision exempting a portion of the agricultural produce required for the protection of the agriculturist and his family, from liability to attachment. He accordingly proposed that the following words be added after the word "such" in line 6 of Clause (b) of the Proviso to the Section:—

"and such portion of agricultural produce or of any class of agricultural "produce as may have been declared to be free from liability under the provisions of the "next following Section."

He further proposed that the following Section 61 of the British Civil Procedure Code be added as Section 54 of the Bill:—

"Our Government may, by Notification in the Government Gazette, declare that "such portion of agricultural produce or of any class of agricultural produce as may "appear to Our Government to be necessary for the purpose of providing until the next "harvest for the due cultivation of the land and for the support of the judgment-debtor "and his family, shall, in the case of all agriculturists or of any class of agriculturists, be "exempted from liability to attachment or sale in execution of a decree."

Mr. Subba Iyer said that the question for consideration was not what protection the legislature should give to judgment-debtors, but what measures were to be devised for facilitating the recovery of monies due under decrees.

Mr. Krishnan Nair said that legislation in British India proceeded on the assumption that the poor ryots were being harassed by the Sowacars and that, as the conditions in Travancore were surely better, the amendment proposed by Mr. Sesha Iyer did not appear necessary.

The President observed that the Council had committed, in his opinion, a mistake in retaining, in the Section, a long list of exemptions, and he said that he would, if left to himself, omit all the Provisos to the Section. As it was, he said, he was not for adding to the already lengthy list of exemptions.

The Council resolved that the amendment was unnecessary.

Mr. Sesha Iyer then proposed the following verbal amendments :—

(1) Substitute "an agriculturist" for "agriculturists" in Clause (c) of the Proviso to the Section.

(2) Substitute "a mere right" for "mere rights" in Clause (e) of the Proviso.

(3) Delete "Military and Civil" in Clause (f) of the Proviso.

(4) Add "whether payable in money or kind" after servants in Clause (i) of the Proviso.

Seconded by Mr. Vieyra.

Carried.

Mr. Sesha Iyer proposed that, in conformity with the British Code of Civil Procedure, the words "Provided also that" in line 1 of the Proviso occurring after the Explanation attached to the Section, be omitted.

Seconded by Mr. Krishnan Nair.

Carried.

Mr. Sesha Iyer stated that the Proviso in question which enacted that nothing in the Section shall be deemed to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, nullified in effect the exemption granted by Clause (c) of the first Proviso to the Section, in so far as decrees for rent were concerned. He suggested that the annulling of the exemption contained in the said Proviso be restricted to the materials of the houses or other buildings in respect of which the rents were due. He accordingly proposed that the words "of any such house or

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building" be added after the word "rent" in line 5 of the said Proviso.

Considerable discussion ensued, and ultimately Mr. Subrahmanya Iyer said that he would remove the Proviso entirely and give complete protection to agriculturists. He accordingly moved that the Proviso, with the amendment already carried, be omitted. The motion was put and agreed to.

Section 54.

Mr. Sesha Iyer observed that, while the first part of the Section provided that the property seized might, on sufficient security being given, be left in the custody of the decree-debtor, the subsequent portion provided for the execution of the decree against the surety. He accordingly proposed that the words "any person rendering himself liable as surety" be substituted for the words "sufficient security being given" in line 8 of the Section.

Mr. Subba Iyer said that the term "security" comprised within its scope a surety, besides including security in cash or property, movable or immovable. He was of opinion that Mr. Sesha Iyer's amendment would curtail the Court's discretion in regard to the security which might be accepted.

Mr. Parameswaren Pillai, in seconding Mr. Sesha Iyer's motion, said that the words "any person rendering himself liable as surety" would include an insolvent person, and he therefore suggested that the words "any person, approved by the Court, rendering himself liable as surety" be used in lieu of the words proposed by Mr. Sesha Iyer.

Carried in accordance with Mr. Parameswaran Pillai's suggestion.

Mr. Sesha Iyer said that express provision should be made for notice to the surety in cases where he was proceeded against and he proposed that the words "after giving him such notice as the Court may deem sufficient" be added after the word "produced" in line 12 of the Section.

Seconded by Mr. Krishnan Nair.

Carried.

Section 56.

Mr. Sesha Iyer said that it was not clear which debtor was referred to in line 7 of the Section and he proposed that the words "or the person holding the money" be added so as to make the meaning clear.

The President observed that it was quite evident that the debtor of the judgment-debtor was meant.

Resolved that the proposed addition was unnecessary.

Mr. Parameswaren Pillai said that it was necessary to provide how the salary of a public officer was to be attached and he proposed that the following provision contained in Section 265 of the Travancore Civil Procedure Code be added as sub-section (2) to the Section :—

"In the case of the salary of a public officer, the attachment shall be made "by a written order requiring the officer whose duty it is to disburse "the salary, to withold every month such portion as the Court may "direct until the further orders of the Court."

"Salaries how attached".

Seconded by Mr. Sesha Iyer.

Carried.

Section 57.

Mr. Sesha Iyer proposed that, in conformity with the provisions of the preceding Section, which authorised the attachment of the debts and monies due to a judgment-debtor, the words "or money attached" be added after the word "debt" in line 7 of the Section.

Seconded by Mr. Subba Iyer.

Carried.

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Section 64.

Mr. Sesha Iyer proposed that the words "shall be paid" be added after the words "decree-holder" in line 5 of the Section.

Seconded by Mr. Vieyra.

Carried.

Section 67.

Mr. Krishnan Nair proposed that the Section be recast as follows:—

"Any decree passed by a Village Panchayat Court may, on the application of the "decree-holder, be transmitted for execution to the Court of any District Munsiff within "whose jurisdiction the judgement-debtor may reside or may have property, or to the "Panchayat Court of any other village in which the judgment-debtor is represented to "have movable property. The Court to which a decree is transferred for execution shall "execute it as if it were a decree passed by itself."

Seconded by Mr. Sesha Iyer.

Carried.

Section 73.

Mr. Subba Iyer suggested that, in conformity with the amendment made in Section 18, relating to the transfer of cases for trial, the revisional powers vested in the High Court under the Bill might be conferred on the District Courts, and he accordingly proposed that the word "District" be substituted for the word "High" occurring between the words "the" and "Court" in lines 1, 21 and 24 of the Section, as also in the marginal note.

Mr. Krishnan Nair, in seconding the proposition, said that the amendment might be adopted, as a large number of revision petitions would otherwise come before the High Court, if there were a number of Village Panchayat Courts in the State.

Carried.

Mr. Subrahmanya Iyer enquired whether under the amendment just carried, the High Court had any revisional powers over the new Courts.

Mr. Parameswaren Pillai suggested that a provision be made conferring on the High Court concurrent revisional jurisdiction with the District Courts.

Mr. Krishnan Nair accordingly moved that the following be added as a separate paragraph:—

"Nothing in this Section shall prevent the High Court from exercising e "powers vested in it by Section 568 of the Code of Civil Procedure."

Seconded by Mr. Subrahmanya Iyer.

Carried.

Mr. Vieyra proposed that the words "within whose jurisdiction a Village Panchayat Court is situated" be added after the word "Court" in line 1 of the Section, and that the word "such" be substituted for the indefinite article "a" before "Village" in line 5.

Seconded by Mr. Subrahmanya Iyer.

Carried.

Mr. Krishnan Nair proposed that, as the District Court concerned was nearer than the High Court, the sixty days' time allowed by the Section for presenting a revision petition might be reduced, and he proposed that "thirty" be substituted for "sixty" in lines 3 and 24 of the Section.

Seconded by Mr. Vieyra.

Carried.

Mr. Sesha Iyer said that the Court of revision may set aside the decree or order of the lower Court on any one of the three grounds specified in the Section, and he proposed that the said grounds be separately numbered, by inserting the figure "(i)" between "of" and "corruption" in line 9, the figure "(ii)" between "or" and "of" in line 11, and the figure "(iii)" between "or" and "that" in line 14, of the Section.

Seconded by Mr. Vieyra.

Carried.

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Mr. Krishnan Nair moved that the words "pending disposal of any such petition, "the District Court may stay execution of the decree or order" in lines 20, 21, and 22, be made a separate paragraph.

Seconded by Mr. Vieyra.

Carried.

Section 74.

Mr. Vieyra proposed that the words "a decree or order of a Village Panchayat Court is set aside" be substituted for the words "the High Court sets aside a decree or order" in lines 1, 2 and 3 of the Section.

Seconded by Mr. Subba Iyer.

Carried.

Section 76.

Mr. Vieyra moved that the indefinite article "a" be substituted for the definite article "the" before the words "District Munsiff" in lines 4 and 5 of the Proviso to the Section.

Seconded by Mr. Krishnan Nair.

Carried.

Mr. Subba Iyer then moved that the Bill, as amended by the Council, be read again on a future day of which notice should be given.

Seconded by Mr. Krishnan Nair.

Carried.

The Council adjourned at 2-45. P. M.

P. RAJAGOPALA CHARI,
President.

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